

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77-7107

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

REYNOLDS SECURITIES INC.,

Plaintiff-Appellee,

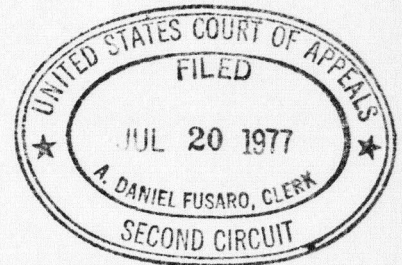
-against-

RICHARD BERTOLI and LILRICH MINES LTD.,

Defendants,

RICHARD BERTOLI,

Defendant-Appellant.



BRIEF FOR APPELLEE REYNOLDS SECURITIES INC.

LUNNEY & CROCCO
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Of Counsel:

MICHAEL J. McALLISTER

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BRIEF FOR APPELLEE REYNOLDS SECURITIES INC. 7

Preliminary Statement

Defendant-appellant Richard Bertoli appealed from the final judgment in its entirety. However, his brief essentially argues that plaintiff-appellee Reynolds Securities Inc. ("Reynolds") failed to prove that Richard Bertoli intended to defraud it. Accordingly Reynolds limits its brief to that issue.

Also, Richard Bertoli tangentially argues that Reynolds failed to prove that his alter ego, defendant Lilrich Mines Ltd. ("Lilrich") was liable to it. Any such argument should be disregarded as Lilrich is not a party to this appeal.

Counter Statement of the Issues

1. Whether the evidence presented established that Richard Bertoli intended to defraud Reynolds?

Counter Statement of the Case

On or about October 20, 1975 Reynolds filed a complaint against Richard Bertoli, Catherine Bertoli a/k/a Catherine Condosta (Richard Bertoli's wife), and Lilrich which alleges that the Bertolis, through their shell corporation Lilrich, defrauded Reynolds in connection with a sale of 3200 shares of International Business Machines common stock on January 23, 28 and 29, 1975 and 1100 shares of Chase Manhattan Bank stock on January 17, 1975. It further alleges that Richard Bertoli stated that Lilrich owned the shares and would deliver them to Reynolds, when he knew that Lilrich did not own such shares. When the Bertolis and Lilrich failed to make delivery, the complaint continues, Reynolds was compelled to "buy-in" the outstanding shares on February 14, 1975, thus suffering a loss of \$136,854.28.

The pleading further alleges that these acts violated §17(a) of the Securities Act of 1933, as amended [15 U.S.C. §77q(a)] ("33 Act"), §10b-5 of the Securities Exchange Act 1934, as amended [15 U.S.C. §78j(b)] ("34 Act) and Rule 10b-5 [17 C.F.R. §240.10b-5], Section 352-c of the General Business Law of the State of New York and constituted common law fraud.

The complaint also alleges that Bertoli on February 28, 1975 executed and delivered to Reynolds a promissory note in the amount of \$136,854.28 with interest and payable on August 28, 1975. In connection with the issuance of the promissory note, Richard Bertoli, it is alleged, defrauded Reynolds in that he knew at the time that he issued the note that he would be unable to pay it on August 28, 1975.

On December 3, 1975 service was effected upon the Bertolis and Lilrich.

On or about February 16 and 21, 1976 Richard and Catherine Bertoli served their answers generally denying the material allegations of the complaint and asserting an affirmative defense that the transactions in suit violated Federal and State law.

Richard and Catherine Bertoli appeared pro se and each served two sets of interrogatories. Extensive motion practice by both Catherine and Richard Bertoli took place, as well.

Lilrich never answered the complaint.

On December 27, 28 and 29, 1976 the action was tried before Hon. Robert J. Ward, without a jury. At the conclusion of the trial on December 29, 1976 the court rendered its findings of fact and conclusions of law.* The Court found that Richard Bertoli and Lilrich intended to deceive Reynolds in that Richard Bertoli represented to Reynolds that Lilrich was "long" the

* Although the trial court directed "that a stenographic transcript of the oral decision of the court...be prepared and furnished to defendant Richard Bertoli....", Bertoli failed to include the decision in the joint appendix. Accordingly the decision is appended hereto as Appendix I.

shares in issue and would deliver certificates to Reynolds representing such shares, when Richard Bertoli knew that Lilrich did not own such shares. The Court further held that Reynolds relied on Bertoli's misrepresentation and as a result suffered a loss of \$136,854.28 when it bought the stock in.

On January 11, 1977 judgment was entered in favor of Reynolds and against Lilrich and Richard Bertoli in the amount of \$136,854.28 with interest from February 14, 1975 and dismissing all claims against Catherine Bertoli.

Counter Statement of the Facts

The Undisputed Facts

At all relevant times Reynolds was engaged in the business of a securities broker-dealer. Richard and Catherine Bertoli are residents of Sparkill, New York. Lilrich at all relevant times was a Canadian corporation which purchased and sold securities for its own account. (¶¶ 3(a)(1)(2)(3) and (4), Consent Pre-trial Order dated September 15, 1976 ("Pre-trial Order"), Doc. No. 40, Record on Appeal)

On or about June 28, 1974 the Bertolis opened a securities account with Reynolds on behalf of Lilrich. At that time the Bertolis were the sole officers of Lilrich empowered to purchase and sell securities on its behalf. At the same time

Lilrich instructed Reynolds to deliver the purchased securities to and to receive the sold securities from Executive Securities Corp. ("Executive Securities"), 1 Exchange Place, Jersey City, New Jersey. (¶ 3(a)(5), Pre-trial Order)

In January, 1975 Lilrich, through Richard Bertoli, instructed Reynolds to make the following sales:

<u>Date</u>	<u>Stock</u>	<u>Price</u>
January 17, 1975	1100 Chase Manhattan Bank	33 1/4
January 23, 1975	1100 International Business Machines	165
January 28, 1975	1100 International Business Machines	188
January 29, 1975	1000 International Business Machines	184 3/4

(¶ 3(a)(6), Pre-trial Order)

Prior to each sale, Lilrich, through Richard Bertoli, stated to Reynolds that it was "long" the shares in issue and would subsequently deliver certificates to Reynolds representing such shares through Executive Securities. (¶ 3(a)(7), Pre-trial Order)

Confirmations of these trades were sent to the Bertolis, Lilrich and Executive Securities. (¶ 3(a)(8), Pre-trial Order)

The Bertolis and Lilrich did not deliver certificates to Reynolds representing such shares prior to February 14, 1975. (¶ 3(a)(9), Pre-trial Order)

On February 28, 1975 Bertoli executed and delivered to Reynolds a document in the sum of \$136,854.28. (¶ 3(a)(10), Pre-trial Order)

The Proven Facts

The Lilrich account at Reynolds was opened and handled by its account executive Robert Harrison. Harrison and Bertoli have known each other since 1945 and socialized at least once a week between 1971 and February 1975. (Testimony of Robert Harrison)

On a daily basis, between approximately February 1, 1975 and February 13, 1975, Robert Harrison inquired by telephone of Richard Bertoli and Executive Securities as to when delivery of the IBM and Chase Manhattan stock would take place. In each instance Harrison was told either by Richard Bertoli or a representative of Executive Securities that delivery was imminent. (Testimony of Robert Harrison)

On February 13, 1975, Robert Harrison went to the offices of Executive Securities with his superior. At that time an unidentified employee of the firm told Mr. Harrison that the National Association of Securities Dealers, Inc. and the Securities and Exchange Commission had closed Executive Securities and taken control of its books and records. (Testimony of Robert Harrison)

On February 13, 1975, Reynolds decided to "buy-in" the

Lilrich account in light of the situation at Executive Securities. (Testimony of David J. Cariseo, Reynolds Vice-President)

On February 14, 1975 Reynolds bought in the securities in suit, thereby sustaining a loss of \$136,854.28. (Plaintiff's Exhibits 12 and 13 (pp. G and H, Joint Appendix); testimony of Albert Herbst, Reynolds Vice-President)

Richard Bertoli in trying to explain the failure of Lilrich to make delivery within ten days of the trade dates presented two alternative theories, both of which were rejected properly by the Court.

Under the first theory, Richard Bertoli stated that in September 1974 he had entered in a "firm delayed delivery contract" in writing with an Italian lawyer representing unidentified interests for some 65,000 shares of IBM stock. Mr. Bertoli failed to produce any writing or witness to substantiate this tale. The Court warned Mr. Bertoli that under the rules of evidence his statement as to what the alleged written contract stated would be inadmissible before a jury but that since this was a bench trial the Court would receive the testimony for whatever it was worth. Needless to say, based on the Court's Findings of Fact (Appendix I hereto), Richard Bertoli's testimony in this regard was found to be less than persuasive.

The alternative theory that Bertoli presented regarding Lilrich's failure to deliver the stock in issue was that he had instructed Executive Securities' Secretary-Treasurer, Arnold L. Freilich, to make delivery of the IBM stock to Reynolds.*

Both Bertoli and Freilich testified, over the objection of Reynolds' counsel, that the IBM stock was misdelivered to another broker on Wall Street, contrary to Richard Bertoli's instructions. On cross-examination of Richard Bertoli and Freilich, they were each asked whether they agreed or disagreed with the conclusions set forth in the initial decision of Hon. Ralph Hunter Tracey, Administrative Law Judge, dated September 3, 1976 in the Matter of Executive Securities Corp. (8-13526), Richard O. Bertoli and Arnold L. Freilich, File No. 3-4694, Securities and Exchange Commission. (Plaintiff's Exhibit 4 id; designated by Reynolds for inclusion in the Record on Appeal by notice served July 15, 1977)

The initial decision, based on evidence adduced at a series of hearings in which Bertoli and Freilich fully participated, concluded that they fraudulently sold, through

* It should be noted that Richard Bertoli never offered any evidence regarding Lilrich's failure to deliver certificates representing the Chase Manhattan stock sold on January 17, 1975.

Lilrich, Executive Securities and another Canadian shell, Freelton Investments, Ltd. ("Freelton") 32,900 shares of IBM stock in January and February 1975. The decision further found that Bertoli and Freilich's acts resulted in a loss to Reynolds and other broker-dealers of \$914,699.06. (pp. 22, 23, Initial Decision, Plaintiff's Exhibit 4 id.) Needless to say, both Freilich and Bertoli disagreed with the conclusions of Judge Tracey.

Reynolds also impeached Bertoli's testimony by extracting from him the admission that he refused to answer questions relating to Lilrich and his other controlled corporations on the ground that his answers might tend to incriminate him. (Transcript of Private Proceeding before the Securities and Exchange Commission, dated April 1, 1975) Bertoli's fears were well-founded. On June 20, 1977 an indictment was filed in the United States District Court for the District of New Jersey charging Messrs. Bertoli and Freilich with violations of §17(a) of the '33 Act and §10(b) of the '34 Act in connection with the sales of IBM stock in January, 1975. (United States of America v. Richard O. Bertoli, et al., Cr. No. 77-236)

Simply Richard Bertoli's defense that he, or one of his nominees, "owned" the IBM stock failed. There was a complete absence of proof of such ownership. This omission, taken

with the facts stipulated to in the pre-trial Order and the credible testimony of Robert Harrison, properly convinced the trier of the facts that Lilrich and Richard Bertoli "engaged in a scheme to defraud" Reynolds. (Appendix I hereto)

Argument

I

REYNOLDS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT RICHARD BERTOLI INTENDED TO DECEIVE IT

At the conclusion of the trial, the evidence clearly and convincingly established that Richard Bertoli intended to deceive Reynolds when he ordered the sale of the IBM and Chase Manhattan Bank stock in January 1975 and stated that he was long the securities. This proof satisfies the highest standard required of a plaintiff in the prosecution of a claim for relief under § 10(b) of the '34 Act. In Ernst & Ernst v. Hochfelder, 425 U.S. 185 (1976), the Supreme Court held that a plaintiff must plead that a defendant made a statement in reckless disregard of the truth, at a minimum, and, more likely, with an intent to deceive the plaintiff. Here, Reynolds proved the necessary intent to deceive and thus, met the higher standard of culpability.

The parties stipulated that Richard Bertoli ordered the sales of the stock in issue. Contemporaneously, it was agreed that he stated to Robert Harrison that Lilrich was "long" the shares and would subsequently deliver the certificates to Reynolds representing the IBM and Chase Manhattan stock. It was further stipulated that Lilrich and the Bertolis did not

deliver the certificates to Reynolds prior to February 14, 1975, the date on which Reynolds bought in the securities and the day after the Executive Securities was closed by the regulatory authorities.

In the face of these consented to facts, Richard Bertoli testified and proceeded to hoist himself upon his own petard. As noted, he raised two defenses, the "firm delayed delivery contract" and the "mistaken delivery" gambit.

Over Reynolds' objection, Richard Bertoli spun a fable concerning an Italian lawyer who on behalf of unknown clients contracted in writing (which was never produced) in September 1974 to deliver to Freelon some 65,000 shares of IBM stock on or about February 28, 1975. Some unknown part of these shares were then "allocated" in Bertoli's mind to Lilrich to satisfy its delivery obligations. There was absolutely no support for this testimony. When asked for such supporting evidence, Bertoli was mute.*

The "mistaken delivery" defense also failed since Bertoli

* Bertoli testified that under Regulation T, Lilrich was entitled to deliver the stock within 30 or 35 days after the sale. Based on the testimony of Albert Herbst, Reynolds' Vice-President, Credit and New Accounts Department, and of the Rule itself, the trial court held that SEC Rule 15c3-3(m) (17 C.F.R. § 240, 15c3-3(m) required delivery within 10 days of the sale. The latest trade took place on January 28, 1975. Lilrich could not have made delivery within the 10-day requirement even if the "firm delayed delivery contract" truly existed. Once Richard Bertoli realized that he failed to convince the trial court that he had 30 days to make delivery, his defensive posture collapsed and he rested his case in short order.

admitted that Judge Tracy's initial decision (Plaintiff's Exhibit 4 id.) was accurate insofar as it held that some 32,900 IBM shares were never delivered throughout Wall Street by Bertoli or his nominees. The only reasonable inference one could draw from Bertoli's testimony as a whole was that he had "shorted" the market in IBM stock and he was unable to cover.

Furthermore, on cross-examination, Richard Bertoli admitted that he refused to answer questions regarding the same transactions in suit herein, in an administrative law proceeding before the Securities and Exchange Commission, on the grounds that the answers thereto might tend to incriminate him. Also, when asked if he disagreed with the conclusions reached by Judge Tracy charging him with fraud (initial decision, Plaintiff's Exhibit 4 id.), Bertoli stated that he did not agree with such conclusions. Richard Bertoli's credibility clearly suffered to such an extent that the Trial Court would be justified in rejecting it totally, as it did.

Bertoli was given two opportunities, the trial of this action and the Securities and Exchange Commission administrative law proceeding, to prove his defense that he or his nominees owned sufficient IBM stock to make good delivery. He failed completely both times and only succeeded in destroying his own credibility.

As stated in the oral decision of the Trial Court (Appendix I hereto), the evidence established that Richard Bertoli intended to deceive Reynolds in connection with the sale of the IBM and Chase Manhattan stock in January 1975. Accordingly, the judgment below in favor of Reynolds against Bertoli should be affirmed in all respects.

Conclusion

The judgment below should be affirmed.

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Of Counsel:

Michael J. McAllister

APPENDIX I

COPY RECEIVED

Reynolds
vs
Bertoli
75 Civ
5181
12/29/76

AR 1

FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COURT: (Ward, J.) The following constitute the court's findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure.

Findings of fact.

1. Plaintiff Reynolds Securities Inc., (hereafter Reynolds) is and has been at all relevant times, a Delaware corporation with its principal place of business in the Southern District of New York. At all relevant times, Reynolds was engaged in the business of a securities broker-dealer and was a member firm of the New York Stock Exchange.

2. Defendants Richard and Catherine Bertoli reside at 1 Van Terrace, Sparkill, New York.

3. Defendant Lilrich Mines Limited (hereafter Lilrich) at all times relevant, was a Canadian Corporation which purchased and sold securities for its own account.

4. On or about June 28, 1974, the Bertolis opened a securities account with Reynolds on behalf of Lilrich. At that time the Bertolis were the sole officers of Lilrich empowered to purchase and sell securities on its behalf.

At that time, Lilrich instructed Reynolds to deliver purchased securities to and to receive sold securities from Executive Securities Corp, 1 Exchange Place, Jersey City,

1 AR 2

2 New Jersey.

3 5. Lilrich through Richard Bertold instructed
4 Reynolds to make the following sales:

5	DATE	STOCK	PRICE
6	Jan. 17, 1975	1,100 Chase Manhattan Bank	\$33 1/4
7	Jan. 23, 1975	1,100 Int'l. Business Machines	\$165
8	Jan. 28, 1975	1,100 Int'l. Business Machines	\$188
9	Jan. 29, 1975	1,000 Int'l. Business Machines	\$184 3/4

10 6. Prior to each sale Lilrich through Richard
11 Bertoli stated to Reynolds that it was "long" the shares
12 in issue and would subsequently deliver certificates to
13 Reynolds representing such shares through Executive Securities
14 Corp.

15 7. Even crediting the testimony of Richard
16 Bertoli that Freelon Investments Limited owned or had a
17 "firm delayed delivery contract" for 65,000 shares of
18 International Business Machines stock with various parties
19 who were identified only as numbered accounts, for which there
20 is no documentary support, these shares would have been
21 delivered at the end of February, 1975, more than ten business
22 days after the last settlement date, which the court finds
23 to have been February 5, 1975.

24 8. Accordingly, Richard Bertoli knew at the times
25 he instructed Reynolds to sell the 3,200 shares of International

1 AR 3

2 Business Machines stock that Lilrich did not own sufficient
3 stock to make good delivery to Reynolds. Richard Bertoli
4 intended to deceive Reynolds by representing to it that
5 Lilrich was "long" these shares.

6 9. Moreover, the court finds from the failure
7 to make delivery of the 1,100 shares of Chase Manhattan
8 Bank stock that Lilrich did not own sufficient Chase Man-
9 hattan Bank stock to make good delivery to Reynolds of said
10 stock and that Richard Bertoli also intended to deceive
11 Reynolds by representing to it that Lilrich was "long" this
12 stock.

13 10. Reynolds relied on Richard Bertoli's
14 representations that Lilrich was "long" the securities that
15 it sold.

16 11. Confirmations of these trades were sent to
17 defendants and Executive Securities Corp.

18 12. Lilrich and Richard Bertoli did not deliver
19 certificates to Reynolds representing such shares prior to
20 February 14, 1975 and in fact Lilrich and Richard Bertoli
21 never delivered the shares in issue to Reynolds.

22 13. On February 14, 1975, Reynolds bought in
23 shares to cover the shares sold as follows:

1 AR 4

2	STOCK	NO. OF SHARES	PRICE
3	Int'l. Business Machines	600	\$220 1/8
4	Int'l. Business Machines	200	216 1/2
5	Int'l. Business Machines	100	220 1/8
6	Int'l. Bsuiness Machines	400	218 1/4
7	Int'l. Business Machines	200	218
8	Int'l. Business Machines	700	217 1/2
9	Int'l. Business Machines	100	220 1/2
10	Int'l. Business Machines	100	218 3/8
11	Int'l. Business Machines	200	220 1/4
12	Int'l. Business Machines	400	216 1/8
13	Int'l. Business Machines	200	216 1/4
14	Chase Manhattan Bank	1,100	34

15 14. The failure of Lilrich and Richard Bertoli
16 to deliver certificates representing the Chase Manhattan Bank
17 and International Business Machines shares sold resulted in
18 damages to Reynolds of \$136,854.28.

19 Conclusions of Law

20 1. This court has jurisdiction over the subject
21 matter based on alleged violations of Section 17(a) of the
22 Securities Act of 1933 as amended and Section 10(b) of the
23 Securities Exchange Act of 1934 as amended.

24 2. Plaintiff has proved that defendant Richard
25 Bertoli individually and as president of Lilrich knowingly

4
1 AR 5

2 and wilfully made misrepresentations of material facts to
3 Reynolds which Reynolds relied upon and thereby sustained
4 a loss in the amount of \$136,854.28.

5 3. Lilrich and Richard Bertoli knowingly and
6 wilfully engaged in a scheme to defraud Reynolds and are
7 liable for the entire loss sustained by Reynolds.

8 4. The plaintiff may enter judgment against
9 the defendants Lilrich and Richard Bertoli in the amount of
10 \$136,854.28, together with interest as provided by law.

11 5. The complaint against Catherine Bertoli
12 is dismissed.

13 The remaining claims are likewise dismissed.

14 Settle judgment on notice.

15 Are there any motions or applications?

16 I will just add for the edification of counsel
17 that, as can be observed, I found against the defendant
18 Richard Bertoli on the securities law fraud claim. I would
19 suggest that I could have entered a default judgment against
20 Lilrich on this claim because I do note that there was service
21 made in the first instance, which was not challenged by motion
22 or answer as required in the Federal Rules of Civil Procedure.

23 Therefore, the defense of insufficiency of service
24 of process or alternatively insufficiency of process, was,
25 in this court's view, waived. However, I determined to make

1 AR 6

2 findings and reach conclusions on the merits with regard to
3 the defendant Lilrich.

4 I did not award judgment to the plaintiff against
5 Richard Bertoli on the promissory note since I concluded
6 from the testimony that at the time the note was signed there
7 was not good consideration.

8 As I view the testimony, Reynolds' witnesses
9 did not testify that Reynolds agreed at the time to forebear
10 from suit, and in view of the circumstances of the case as
11 I saw it, I did not find the requisite consideration for me
12 to believe that I could properly make such a duplicative
13 award against Mr. Bertoli on the promissory note.

14 I did not consider Catherine Bertoli a controlling
15 person as I heard the testimony.

16 I did consider whether or not she might be found
17 to be an aider and abettor by virtue of the fact that she
18 had admitted signing the corporate resolution which is
19 plaintiff's exhibit 16, and also the corporate resolution
20 which is plaintiff's exhibit 18.

21 However, although this authorized Mrs. Bertoli
22 under the name Catherine Condosta as well as her husband
23 Richard Bertoli, to transact purchases and sales of securities
24 in the account of Lilrich Mines Limited, I noted at no time
25 did Mrs. Bertoli give any instructions to Reynolds or any of

1 AR 7

2 its representatives. Therefore, I concluded that there was
3 not sufficient for me to find that she was an aider and
4 abettor in this scheme to defraud.

5 I mention these latter matters so that counsel
6 will be aware of the basis of the court's decision in the
7 event that either side desires to take an appeal.

8 Is there anything further?

9 MR. BERTOLI: Your Honor, I understand I have
10 thirty days to appeal this decision from today?

11 THE COURT: The next step will be a judgment,
12 which I assume will be prepared by Mr. McAllister. That will
13 be settled on notice to you and to Mr. Gitlin and it is my
14 understanding that your time to appeal runs from the date on
15 which I sign the judgment, which may be in a few days.

16 I suggest that you confer with Mr. Gitlin on
17 this, but it is my understanding that the time to appeal runs
18 for thirty days from the date the court signs the judgment
19 in this case.

20 MR. McALLISTER: Your Honor, if I may, I have one
21 application and it is to move to modify or amend paragraph
22 five which states, in the conclusions of law, which states
23 that the remaining claims are likewise dismissed.

24 Your Honor, in light of the fact that my under-
25 standing is that the elements of a 10(b)(5) fraud are the

1 AR 8

2 same as common law fraud under the statute of New York, and
3 this court has pendant jurisdiction over that second claim,
4 that the court modify its conclusions of law to include the
5 common law fraud counts as well.

6 THE COURT: I will modify my decision and I will
7 change the word from claim to claims, with the clear under-
8 standing that I am dismissing as far as Mr. Bertoli is
9 concerned, the claim on the promissory note.

10 MR. McALLISTER: Actually, two counts, one fraud
11 on the promissory note itself.

12 THE COURT: It is those claims which I intend
13 to dismiss.

14 MR. McALLISTER: I understand that.

15 THE COURT: And no other parts as far as Mr.
16 Bertoli is concerned.

17 MR. McALLISTER: And no others. That would be
18 under the General Obligations Law as well. I don't care
19 about the General Obligations Law.

20 THE COURT: I will suggest that I really in-
21 tended to dismiss that as well. What I intended was to have
22 subsist the securities law claims and I will add to that the
23 common law fraud claim.

24 MR. McALLISTER: Thank you, your Honor.

25 THE COURT: Let the record be quite clear that

1 AR 9

2 the other claims, and I speak now of the promissory note,
3 two claims and the General Obligations Law claim, are dis-
4 missed.

5 MR. McALLISTER: I understand, your Honor.

6 THE COURT: As far as Catherine Bertoli is
7 concerned, all claims are dismissed.

8 MR. McALLISTER: I understand, your Honor.

9 THE COURT: Anything further, gentlemen?

10 MR. McALLISTER: Not from me.

11 MR. GITLIN: No, I don't.

12 MR. BERTOLI: Your Honor, with respect to finding
13 of fact number eight, the definition of owning in that quote,
14 is that to mean --

15 THE COURT: I used only one quote and the only
16 one I used in my decision was on the word "long".

17 MR. BERTOLI: The "own" is just the word own or
18 as spelled out in the securities laws?

19 THE COURT: I will let the word speak for itself.
20 Anything further?

21 MR. McALLISTER: Just to thank you for your time,
22 your Honor. I has been a long three days. Thank you.

23 -- --

24

25

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK
COUNTY OF NEW YORK:

Florence Collyer being duly sworn, says: that I am over the age of eighteen years of age and am not a party herein, and that on the 20 day of July, 1977, I served a true copy of the within

APPELLEE'S BRIEF

upon the defendant hereinafter named at the places hereinafter stated and set opposite their respective names by depositing the same, properly enclosed in a post-paid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office Department at Room 2100, 20 Exchange Place, New York, N.Y. 10005 within the City and State of New York, directed to said defendant at his respective address given below, which was designated by him for that purpose upon the preceding papers in this action, to wit:

TO: Mr. Richard Bertoli
One Van Terrace
Sparkill, New York 10976

Sworn to before me this
20th day of July 1977

Florence Collyer
Florence Collyer

Charles L. Dismukes, Jr.
Notary Public

CHARLES L. DISMUKES, JR.
Notary Public, State of New York
No. 31-0969070
Qualified in New York County
Commission Expires March 30, 1979

